

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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Broad Street Supermarket Corp.,

Plaintiff,

- against -

United States of America, *et al.*,

Defendants.
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GERSHON, United States District Judge:

Plaintiff's counsel has objected to the recommendation of Magistrate Judge Roanne L. Mann that this action be dismissed with prejudice for lack of prosecution. While counsel's excuse for not responding to Judge Mann's order to show cause why the case should not be dismissed is, so far as it is discernable, not persuasive, other factors, including the relative recency of the case, the interest in resolving cases on the merits, and counsel's expressed interest in proceeding expeditiously persuade me to withhold dismissal with prejudice at this time.

However, counsel concedes that service on the defendants was not properly made. Counsel's reliance on a process server to decide *who* to serve does not excuse the improper service or constitute good cause for an extension of time to serve under Rule 4(m) of the Federal Rules of Civil Procedure. Therefore, this action is dismissed for lack of service without prejudice.

SO ORDERED. / / /

s/NG

NINA GERSHON

United States District Judge

Dated: Brooklyn, New York
April 20, 2012